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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re: :
96 WYTHE ACQUISITION LLC, : Chapter 11
Debtor. : Case No. 21-22108 (RDD)
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**OBJECTION TO DIRECT TESTIMONY OF
MICHAEL LICHTENSTEIN, TOBY MOSKOVITS, AND DAVID GOLDWASSER**

Benefit Street Partners Realty Operating Partnership, L.P. ("Benefit Street") submits this objection to the direct testimony of Michael Lichtenstein, Toby Moskovits, and David Goldwasser (the "Objection").

FILED
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S.D. OF N.Y.

I. Michael Lichtenstein Objections

Benefit Street objects to the direct testimony of Michael Lichtenstein as indicated in the chart below:

| <u>Paragraph</u> | <u>Objection</u> |
|------------------|---|
| 4 | First sentence is argumentative. Second sentence is speculative and/or calls for expert testimony. Last sentence is irrelevant as it discusses the Plan. |
| 6 | The entire paragraph is irrelevant as concerning the performance of the Hotel. First sentence lacks foundation as to profitability and exceeding financial projections. The remainder of paragraph 6 is irrelevant as it discusses the Plan. |
| 7 | The entire paragraph is irrelevant as discussing the Plan. |
| 8 | The entire paragraph is irrelevant as concerning the performance of the Hotel. Second sentence lacks foundation as to the Hotel outperforming its competition. |
| 9 | The entire paragraph is irrelevant as concerning the performance of the Hotel. First sentence Lacks Foundation and Hearsay as relying on the expert report. |
| 10 | The last sentence lacks foundation as to market occupancy and is cumulative of the claims that the Hotel has outperformed its competition and hearsay and Irrelevant as concerning the performance of the Hotel. Footnote #2 lacks foundation and Irrelevant as concerning the performance of the Hotel. Footnote #3 is cumulative as to the Hotel's performance compared with the competition and irrelevant as concerning the performance of the Hotel. |
| 11 | Entire paragraph is irrelevant as concerning the performance of the Hotel. As admitted, calls for expert testimony. It furthermore lacks foundation. Finally, it contains Hearsay by reference to statements made by expert. |
| 12 | Entire paragraph is irrelevant as concerning the performance of the Hotel. Is speculative, lacks foundation, and is cumulative. |
| 13 | Entire paragraph is irrelevant as concerning the performance of the Hotel. Is irrelevant, speculative, and lacks foundation. |
| 15 | Entire paragraph contradicts a Judicial Admission ¹ in discussing alleged insider loans. |

¹ Judicial admissions noted herein are due to the Debtor's admission and establishment of certain facts based on statements or omissions in its bankruptcy schedules and statement of financial affairs.

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| 16 | The third sentence contradicts a Judicial Admission by discussing the existence of insider loans. The fourth sentence lacks foundation, is speculative, and calls for expert testimony. Fifth sentence to end of the paragraph constitutes hearsay as relying on the Podgainy Declaration. |
| 17 | The entire paragraph contradicts a Judicial Admission by claiming the existence of insider loans. |
| 18 | The first three sentences contradict a Judicial Admission by claiming the existence of insider loans. The last sentence is irrelevant as discussing the Plan and contradicts a Judicial Admission by assuming legitimacy of insider loans. |
| 19 | The entire paragraph is argumentative. |
| 20 | The first sentence is hearsay, second sentence is hearsay and a legal conclusion. The last sentence is hearsay. The last two sentences contradict a Judicial Admission by assuming legitimacy of insider loans. |
| 21 | The entire paragraph is argumentative, lacks foundation, and is irrelevant. |
| 22 | The entire paragraph is hearsay and calls for an expert opinion. |
| 23 | The entire paragraph contains hearsay, speculation, and lacks foundation. The last sentence contradicts a Judicial Admission by assuming legitimacy of insider loans. |
| 24 | The first four sentences contradict a Judicial Admission by assuming legitimacy of insider loans. The last sentence is irrelevant as discussing the Plan. |
| 25 | The entire paragraph is cumulative and constitutes improper expert testimony. The entire paragraph also contradicts a Judicial Admission by assuming legitimacy of insider loans. It also contains hearsay as reference to an expert report. |
| 26 | The first two sentences are irrelevant as pertaining to the present management of the Debtor. |
| 27 | The entire paragraph is irrelevant as concerning the performance of the Hotel. Line (i) is irrelevant as discussing the Plan. |
| 29 | The entire paragraph calls for expert testimony |
| 30 | The last sentence is irrelevant as discussing the Plan. |
| 31 | The second and last sentences are speculative and constitute improper expert testimony |
| 32 | The first sentence is argumentative. The third sentence lacks foundation and is speculative. The last sentence is a legal conclusion. |

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| 33 | Entire paragraph constitutes legal conclusions. |
| 34 | The first sentence is a legal conclusion. The second sentence is Hearsay. |
| 35 | The first and third sentence are speculative. |
| 36 | The second sentence constitutes speculation, improper expert testimony, and is argumentative. The third sentence is irrelevant as discussing the Plan. |
| 37 | The entire paragraph is speculation. |
| 38 | The entire paragraph is irrelevant as concerning the management of the Hotel. |
| 39 | The last sentence is irrelevant. |
| 40 | The entire paragraph is a legal conclusion and speculative. |
| 41 | The last sentence contains a legal conclusion and is argumentative. |
| 42 | The second sentence is speculation. |
| 43 | The entire paragraph contains speculation and lack of foundation. The fourth sentence is a legal conclusion as to income being protected from taxation. The last sentence is irrelevant as discussing the Plan. |
| 44 | The entire paragraph is irrelevant as discussing the Plan. |
| 46 | The entire paragraph contains speculation and hearsay. The second sentence is irrelevant as discussing the Plan. The third sentence is irrelevant as discussing the current management of the Hotel. |
| 47 | The first sentence is irrelevant as discussing the Plan. In footnote #7, the fifth through sixth sentences are irrelevant as they discuss the Plan. |
| 48 | The entire paragraph is irrelevant as discussing the Plan. |
| 49 | All but the first sentence is irrelevant as discussing the Plan. |
| 50 | The entire paragraph contains hearsay. The entire paragraph is also argumentative, lacks foundation, is speculation, and is irrelevant as discussing the Plan. |
| 51 | The entire paragraph contains speculation, lacks foundation, is argumentative, and is irrelevant as discussing the Plan. |

II. Toby Moskovits Objections

Benefit Street objects to the direct testimony of Toby Moskovits as indicated in the chart below:

| <u>Paragraph</u> | <u>Objection</u> |
|------------------|---|
| 4 | The entire paragraph is irrelevant. |
| 5 | The entire paragraph is irrelevant. Footnote # 2 is irrelevant. |
| 6 | The entire paragraph is speculative and lacks foundation. |
| 7 | The first sentence is speculation. The second sentence through the end of the paragraph is irrelevant as discussing the Plan, lacks foundation, and is speculative. |
| 8 | The first sentence lacks foundation and is speculative. The remainder of the paragraph is irrelevant. |
| 9 | The entire paragraph is irrelevant, lacks foundation, and is speculative. |
| 10 | The entire paragraph is irrelevant as concerning the present operation of the Hotel. Footnote #3 is also irrelevant. |
| 11 | The entire paragraph is irrelevant as concerning the present operation of the Hotel. |
| 12 | The entire paragraph is irrelevant as concerning the present operation of the Hotel. |
| 13 | The entire paragraph is irrelevant, lacks foundation, and is speculative. |
| 14 | The entire paragraph is irrelevant as discussing the Plan. |
| 15 | The entire paragraph lacks foundation and is speculative. |
| 16 | The first sentence is speculation. The second sentence through the end of the paragraph is irrelevant as discussing the Plan, lacks foundation, and is speculative. |
| 17 | The entire paragraph lacks foundation, is speculative, and is argumentative. |
| 18 | The entire paragraph is irrelevant as discussing the Plan, is speculation, lacks foundation, is cumulative, and constitutes improper opinion testimony. |
| 20 | The entire paragraph contradicts a Judicial Admission. |
| 21 | The first sentence and last two sentences contradict a Judicial Admission. Footnote #5, from the third sentence to the end, is hearsay. |

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| 22 | The entire paragraph and footnote #6 contradicts a Judicial Admission. |
| 23 | The entire paragraph contradicts a Judicial Admission. |
| 26 | The first sentence contains a legal conclusion. |
| 27 | The entire paragraph is irrelevant. |
| 28 | The entire paragraph lacks foundation. |
| 29 | The entire paragraph lacks foundation and is speculative. |

III. David Goldwasser Objections

Finally, Benefit Street objects to the direct testimony of David Goldwasser as indicated in the chart below:

| <u>Paragraph</u> | <u>Objection</u> |
|------------------|---|
| 4 | The entire paragraph is irrelevant as discussing the Plan, speculative, lacks foundation, and is improper opinion testimony. |
| 5 | The entire paragraph is irrelevant as discussing the Plan and current operation of the Hotel, it is speculative, lacks foundation, and is improper opinion testimony to the extent it claims the Hotel "outperforms its competitors." |
| 7 | The last sentence is irrelevant as discussing the Plan. |
| 8 | The first sentence is improper opinion testimony, is speculative, and lacks foundation. The second and third sentence is irrelevant as discussing the Plan, is speculation, and is argumentative. The last sentence is speculation, lacks foundation, and is argumentative. |
| 9 | The entire paragraph is speculation, argumentative, lacks foundation, and is improper opinion testimony. |

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| 10 | The first sentence is irrelevant as discussing the Plan and present operation of the Hotel. The last sentence contains improper hearsay. |
| 11 | The first sentence and fourth sentence through the second to last sentence contradict a Judicial Admission in discussing the alleged insider loan, is speculation, and lacks foundation. The last sentence is hearsay. Footnote #2 contradicts a Judicial Admission and is speculation. |
| 12 | The entire paragraph contains hearsay, contradicts a Judicial Admission in discussing the alleged insider loans, is speculation, and lacks foundation. Footnote #3 is hearsay. |
| 13 | The entire paragraph contains improper opinion testimony, contradicts a Judicial Admission in discussing the alleged insider loans, is speculation, and lacks foundation. |
| 14 | The entire paragraph lacks foundation, is speculative, and contains improper opinion testimony. |
| 15 | The entire paragraph is irrelevant as discussing the Plan, is speculative, lacks foundation, and is improper opinion testimony. |
| 16 | The third sentence is hearsay. The last sentence contradicts Judicial Admission and is irrelevant. |
| 17 | The first sentence lacks foundation, is improper opinion testimony, and a legal conclusion. The last sentence is irrelevant as discussing the Plan. |
| 18 | The second sentence is irrelevant as discussing the Plan. The last sentence lacks foundation, is speculative, improper opinion testimony, and a legal conclusion. |

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| 19 | The second sentence is irrelevant as discussing the Plan. The last sentence lacks foundation, is speculative, improper opinion testimony, and a legal conclusion. |
| 20 | The entire paragraph lacks foundation, is speculative, contains improper opinion testimony, and is a legal conclusion. |
| 21-40 | Irrelevant as discussing the Plan. |

Benefit Street respectfully requests that the Court consider and sustain these objections as articulated herein.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted, this 24th day of May, 2022.

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